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SUBJECT: UKRAINE: COURT BRINGS BACK 13 PERCENT IMPORT
TARIFF SURCHARGE

REFS: A) KYIV 497
B) KYIV 349

¶1. (SBU) Summary: Ukraine's Constitutional Court issued a ruling on June 24 that could reinstate a 13 percent tariff surcharge on a wide range of imports. The Court struck down portions of a law that had given Ukraine's Cabinet of Ministers authority to tinker with the 13 percent surcharge measure. How the GOU will implement the ruling is not yet clear, however. Although the government now opposes the import tariff surcharge, we suspect that it will have no choice but to re-impose the tariff surcharge, pending action by the parliament. End Summary.

Court Ruling

¶2. (U) The Constitutional Court of Ukraine rendered a decision on June 24 regarding Law No. 923-VI, "On Amending Some Laws of Ukraine to Improve the Balance of Payments of Ukraine in Response to the World Financial Crisis," which imposed a 13 percent, ad valorem increase in import duties for a wide range of goods (ref B). (Note: President Yushchenko signed the bill into law in February, but simultaneously sent an appeal to the Constitutional Court arguing that provisions of the law that allowed the Cabinet of Ministers to alter/extend the tariff surcharge measure were unconstitutional. End note.) The Constitutional Court ruled in President Yushchenko's favor, clarifying that, according to the Constitution, only the Rada (parliament) can set import tariffs. The Court therefore struck down provisions of the law that provided the Cabinet of Ministers with authority to alter the tariff surcharge.

¶3. (U) The practical impact of the Court's ruling is still not entirely clear. Most news outlets -- including the trustworthy daily paper Kommersant Ukraine -- reported that the ruling will cause the 13 percent surcharge to return for all products originally listed in the law. (Note: See ref B for the complete list. The Cabinet of Ministers in late March had cancelled the surcharge for all products except some automobiles and refrigerators (ref A). End note.) Analysts seemed unsure as to whether the government would try to apply the surcharge retroactively, that is, demand additional customs duty from companies that imported goods on the list after the Cabinet of Ministers issued its resolution in March.

¶4. (SBU) Lidiya Melnyk, deputy head of the Ministry of Economy's WTO Department, told us on June 25 that the Ministry (which is responsible for import/export tariff policy) did not yet have a clear understanding of the ruling. She also noted that Deputy Minister Valeriy Pyatnytskiy was in Geneva and that no decision would likely be taken until his return. The Legal Department of the State Customs Service told us that, immediately following the Court ruling, they sent a letter to the Cabinet of Ministers requesting an explanation. As of the afternoon of June 25, however, Customs had not yet received updated instructions.

¶5. (SBU) Ulrike Hauer, Head of Trade and Economic Section of the local delegation of the European Commission, told us on June 25 that they were also waiting for clarification. Hauer said she hoped that the ruling would simply mean that the Cabinet of Ministers could not extend the measure beyond its scheduled September end-date, but recognized that it could bring the tariff surcharge back online for the complete list of products.

Comment: Surcharge Likely Coming Back

¶6. (SBU) Although the GOU was moving in the right direction on lifting the 13 percent tariff surcharge, this Court ruling will likely be a step back. The ruling, while unfortunate, seems in line with Ukrainian

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law, as the Constitution does clearly state that only the Rada can set import tariffs. High-level GOU officials have spoken out against the tariff measure; Minister of Economy Bohdan Danylyshyn did so in his meeting with AUSTRIAN Chris Wilson on June 22 (septel). Yet the GOU will now likely have to re-impose the 13 percent surcharge on the full list of imports in order to comply with the Court's ruling. There is hope that the Rada will act quickly to pass new legislation to repeal the measure, and, indeed, the GOU was already pushing the Rada on this front. Serious opposition in the Rada remains, however, and time is short -- the Rada is scheduled to go into summer recess on July 13. In any case, the measure is scheduled to expire in September, and we do not expect Ukraine to extend it beyond then. End comment.

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